

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

CALVIN DOWDELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No: 3:17-cv-549-WKW-WC
	)	
LEE COUNTY, ALABAMA, <i>et al.</i> ,	)	
	)	
Defendants.	)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Before the court are Defendant Lee County, Alabama's Motion to Dismiss Third Amended Complaint (Doc. 30) and Plaintiff's Motion for Voluntary Dismissal of Lee County, Alabama as a Defendant to this Current Action (Doc. 35).

Plaintiff's motion does not cite any authority for the relief he seeks. Pursuant to Rule 41(a)(1)(A)(i) & (ii), of the Federal Rules of Civil Procedure, a plaintiff may voluntarily dismiss an action against a defendant, without a court order, provided that the defendant has not filed an answer or a motion for summary judgment, or if the affected parties submit a stipulation of dismissal. Outside of those circumstances, a plaintiff may dismiss her action against a defendant "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, Defendant Lee County has filed only a motion to dismiss Plaintiff's Third Amended Complaint. *See* Doc. 30. However, Defendant has filed both an answer and a motion for summary judgment in response to previous iterations of Plaintiff's complaint.

On May 23, 2018, the undersigned entered an Order (Doc. 36) directing Defendant Lee County to file a written response to Plaintiff's motion for voluntary dismissal and indicate whether it opposes the motion. On May 24, 2018, Lee County filed its Response (Doc. 37), in which it indicates that it does not oppose Plaintiff's motion for voluntary dismissal. As Defendant Lee County does not oppose the motion and has not argued that voluntary dismissal should be allowed only under certain conditions, the undersigned concludes that the Motion for Voluntary Dismissal is due to be granted.

Accordingly, the undersigned Magistrate Judge hereby RECOMMENDS that Plaintiff's Motion for Voluntary Dismissal of Lee County, Alabama, as a Defendant to this Current Action (Doc. 35) be GRANTED and that all claims presented in the Third Amended Complaint against Defendant Lee County be DISMISSED without prejudice and that Defendant Lee County be DISMISSED from this action. The undersigned further RECOMMENDS that Defendant Lee County's Motion to Dismiss (Doc. 30) be DENIED as moot. Finally, the undersigned RECOMMENDS that this matter be referred back to the undersigned Magistrate Judge for further proceedings or recommendation as may be appropriate.

It is further ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **June 27, 2018**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive, or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); see *Stein v. Reynolds Sec., Inc.*, 667 F.2d 33 (11th Cir. 1982); see also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

DONE this 13th day of June, 2018.

/s/ Wallace Capel, Jr.

CHIEF UNITED STATES MAGISTRATE JUDGE